

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CHAN CHEESEBORO, RALPH WHITNEY, and
DELLA CHEESEBORO,

Plaintiffs,

– against –

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, CITY OF NEW YORK, NEW
YORK CITY BOARD OF EDUCATION, MOTOR
VEHICLE ACCIDENT INSURANCE CORPOR-
ATION, MATRON JANE DOE, AND “DOE” BUS
MANUFACTURER,

Defendants.
-----X

TOWNES, United States District Court:

On July 17, 2013, this Court held a pre-motion conference in connection with a request filed by defendants City of New York and New York City Board of Education (collectively, the “City Defendants”) for permission to move for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). Due to what Plaintiffs’ counsel now characterizes as “unexcused law office failure,” *see* Letter to Hon. Sandra L. Townes from Aaron David Frishberg, dated Sept. 30, 2013, Plaintiffs’ counsel did not attend that conference. Accordingly, this Court granted the City Defendants’ request for permission to move and set a briefing schedule which required that the City Defendants serve their motion to dismiss on Plaintiffs on or before August 19, 2013; that Plaintiffs serve their response to the motion on or before September 19, 2013, and that the City Defendants serve their reply, if any, on or before October 3, 2013.

Sometime in early September 2013, this Court received a telephone call from Assistant Corporation Counsel Anshel David, alerting this Court to the fact that there was no minute entry

MEMORANDUM AND ORDER

12-CV-6439 (SLT) (SMG)

on the docket relating to the July 17, 2013, proceedings. Mr. David himself expressed some uncertainty regarding the briefing schedule that had been set during those proceedings. In response to Mr. David's call, this Court uploaded a minute entry which contained the briefing schedule. That minute entry was not uploaded until Friday, September 16, 2013 – only one business day before Plaintiffs' responsive papers were due.

For reasons which remain unclear, Plaintiffs' counsel did not request an extension of time in which to file the responsive papers. On September 30, 2013, Mr. David sent a letter to this Court, noting that the City Defendants had yet to receive any submissions from Plaintiffs. In that letter, Mr. David requests that this Court preclude Plaintiffs from filing a late response and grant the City Defendants' motion as unopposed.

By letter dated September 30, 2013, Plaintiffs' counsel opposes the City Defendants' request. Plaintiff's counsel represents that he called both Mr. David and this Court upon realizing that he had missed the pre-motion conference. According to Plaintiffs' counsel, Mr. David did not have time to speak with him and he received assurance from this Court that a minute entry would be uploaded. In addition, Plaintiffs' counsel notes that the notice of motion filed by the City Defendants in connection with their motion did not provide a return date or specify when responsive papers were due.

In light of Plaintiffs' counsel's representations, this Court will reluctantly deny the City Defendants' request to preclude Plaintiffs from filing responsive papers. Plaintiffs' time in which to file responsive papers is extended to October 15, 2013. However, since Plaintiffs never requested permission to cross-move for judgment on the pleadings, as required by this Court's Individual Motion Practices and Rules (available at <https://www.nyed.uscourts>).

gov/pub/rules/SLT-MLR.pdf), Plaintiffs are precluded from cross-moving. The City Defendants' time to file a reply is extended to October 28, 2013.

Defendants' motion for judgment on the pleadings, filed October 4, 2013, is deemed withdrawn. The City Defendants may re-file that motion, together with Plaintiffs' responsive papers and their reply papers, on or before October 28, 2013. If Plaintiffs fail to file responsive papers by October 15, 2013, the City Defendants may re-file their motion for judgment on the pleadings on October 16, 2013.

SO ORDERED.

s/

SANDRA L. TOWNES
United States District Judge

Dated: October 8, 2013
Brooklyn, New York